

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

OCT 29 2018

at 1 o'clock and 55 min. P M
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN MCAVAY,

Defendant.

) MAG. NO. **18-01214KSC**

)
) CRIMINAL COMPLAINT;
) AGENT'S AFFIDAVIT

CRIMINAL COMPLAINT


I, the undersigned complainant, being duly sworn, state the following is true

and correct to the best of my knowledge and belief.

COUNT 1

On or about October 23, 2018, in the special maritime and territorial jurisdiction of the United States as set forth in 18 U.S.C. § 7(8), and pursuant to 18 U.S.C. § 3238, within the venue of the United States District Court for the District of Hawaii, JOHN MCAVAY, the defendant, assaulted M.O. by intentionally striking him and as a result, M.O. suffered serious bodily injury.

In violation of 18 U.S.C. § 7(8), and 113(a)(6).



Danielle DeSanctis
Special Agent
Federal Bureau of Investigation

Subscribed to and sworn before me
on October 29, 2018 at Honolulu, Hawaii,



KEVIN S.C. CHANG
United States Magistrate Judge



AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Danielle DeSanctis, being duly sworn, depose and state the following:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), and have been since July 2014. I am currently assigned to the Violent Crime Task Force of the FBI Honolulu Field Office where my duties include, but are not limited to, investigating criminal street gangs and crimes of violence, including bank robberies. I am further deputized as a Special Deputy U.S. Marshal and have been assigned to the District of Hawaii U.S. Marshal Fugitive Task Force since January 2018, where my duties include, but are not limited to fugitive apprehensions. Prior to joining the FBI, I served as a Norfolk Police Officer for four years and a Detective for two years. As a result, I have experience investigating bank robberies and related offenses. I am an investigative or law enforcement officer of the United States within the meaning of §2510(7) of Title 18, United States Code and empowered by law to conduct investigations of and to make arrests for offenses enumerated in §2516 of Title 18, United States Code. Through my training and experience, I have become familiar with the manner in which criminal offenders operate, and the efforts of those involved in such activities.

2. The facts in this affidavit come from my personal observations and knowledge, my training and experience, information provided to me by other law

enforcement personnel, public records, and witnesses. This affidavit is intended to show merely that sufficient probable cause exists for the criminal complaint and does not set forth all of my knowledge about this matter.

3. This Affidavit is made in support of a criminal complaint for JOHN MCAVAY (MCAVAY), a U.S. citizen, for one count of Assault resulting in serious bodily injury, in violation of Title 18, United States Code §§ 7(8) and 113(a)(6).

PROBABLE CAUSE

4. On October 25, 2018, a joint investigation involving special agents and task force officers (TFOs) of the FBI/Honolulu Field Office and the United States Coast Guard Investigative Service (CGIS), was initiated into a reported assault on the Holland America Group cruise liner, The Star Princess (**Ship**), a foreign flag vessel.

5. On October 23, 2018, the Ship was sailing from the port of Los Angeles, CA to Hilo, HI. At approximately 2100 hours (UTC-9), a male passenger, later identified as M.O., a U.S. citizen, DOB: XX/XX/1945 (**the Victim**), was reported to have been assaulted in the bathroom, located on the seventh deck, starboard side, next to the photo booth. At the time of the report, the Ship's navigational position was recorded as Lat. 23° 37.1' N,

Lon. 145° 12.7' W. The nearest point of land was the island of Hawaii, approximately 593 nautical miles away. The Ship's navigational position was recorded at the top of every hour. The Ship had a scheduled departure from Los Angeles, CA and arrival in Hilo, Hawaii.

6. On October 23, 2018, the victim provided a written statement wherein he stated he utilized a closed door stall, within the aforementioned bathroom; as he opened the door to exit the stall, he was confronted by an unknown agitated male. The pair exchanged words in the doorway of the stall, at which time the victim attempted to leave the situation. As the victim bypassed the suspect, he was struck in the head. The victim described the assailant as being approximately 5'10" with sandy colored hair.

7. At the time of the assault, another male passenger, later identified as F.B., was also in the bathroom. F.B., who provided a written statement to security, was at the sink washing hands and overheard what sounded like two men talking inside one of the stalls. F.B. did not hear the content of the conversation or look at the men talking; as he turned to throw away his paper towel, he faced the direction of the two men. F.B. saw a white male, approximately 5'11", with white hair and mustache, punch the victim in the head with his closed right fist. F.B. described the victim as "a dead

body hitting his head onto the toilet a couple of times and then rolled onto the floor.”

8. F.B. attempted to follow the suspect from the bathroom but was unable to determine his direction of travel and returned to call for, and render aid to the victim.

9. Onboard paramedic, M.S., arrived on-scene and transported the victim to the medical center where the victim was tended to by onboard doctors. The victim sustained lacerations to his right eyebrow and both ear lobes, which required sutures. The victim was released from the medical center and returned to his cabin.

10. On October 24, 2018, the victim awoke and found it difficult to move his limbs and maintain his balance. The victim sought medical assistance and was admitted for monitoring. Throughout the day, the victim’s prognosis deteriorated and medical arranged for the victim’s transport to a medical facility on shore.

11. On October 25, 2018, at approximately 0100 hours (UTC-9), the victim was removed from the Ship and transported via military helicopter to Hilo Medical Center, Hilo, Hawaii. Shortly after arriving, the victim was deemed to need a higher level of care and was medically transported to

Queen's Medical Center (QMC), Honolulu, Hawaii, via medivac services.

12. On October 25, 2018, the Ship began periodic announcements over the public address system, requesting for passengers with information regarding the incident, to please contact guest services.

13. On October 25, 2018, SAs DeSanctis and Trotter met with the charge nurse at QMC, who stated the victim was in a medically induced coma and would be receiving an MRI to determine extent of injury.

15. On October 27, 2018, passenger A.G., came forward to Ship security officer, to report having information regarding the incident. A.G. met with Security Officer and reviewed passenger photos at which time she positively identified MCAVAY as the assailant.

16. On October 28, 2018, SA Thomas Marin interviewed A.G., who stated on October 26th she and her husband attended a luau excursion on the island of Oahu. While at dinner, she overheard a conversation between another couple she recognized from the Ship, sitting across from them. A.G. heard the male, later identified as MCAVAY, turn to his wife and state he had to tell her something regarding the incident in the bathroom. MCAVAY stated he was in a bathroom stall when a male began banging the door. MCAVAY opened the door and the unknown male pushed him into the stall.


MCAVAY attempted to get by the male, at which time the unknown male kicked him in the lower calf. MCAVAY stated he “cold cocked” the male. MCAVAY stated the male’s eyes were open at the time he left the bathroom. MCAVAY also stated he heard someone else yelling “call security.”

17. On October 28, 2018, SA DeSanctis interviewed J.G., who stated he was he also sitting across from MCAVAY and his wife, at the aforementioned luau. J.G. stated he observed MCAVAY make a “punching motion” with his fist toward his wife’s face, but did not hear any of the conversation, because he is hard of hearing.

18. On October 29, 2018, SAs Marin and Jason White, advised MCAVAY of his Miranda rights. MCAVAY stated he understood his rights and was willing to provide a statement at that time. MCACAY stated at approximately 2045 hours, on October 23, 2018, he was in the furthest stall, from the entrance, of the bathroom, when an unknown male, later identified as the victim, attempted to enter. When MCAVAY opened the stall door, the victim attempted to walk-in before MCAVAY could exit. MCAVAY pushed the victim with both hands in his chest, and exited the stall. MCAVAY was kicked in the lower calf area by the victim; in response, MCAVAY hit the victim with his right hand, and the victim went down. MCAVAY stated to his hand still hurt. He then stated as he was leaving the bathroom and

overheard someone yelling for security. MCAVAY stated the day after he told his wife, he told their travelling companions about his involvement in the incident.

19. Agents photographed MCAVAY's hands at the completion of the interview and noted that his right appeared to be slightly larger than his left. Agents also photographed his calf for any injury, and none was noted.



Danielle DeSanctis
Special Agent
Federal Bureau of Investigation

Subscribed to and sworn before me
on October 29, 2018 at Honolulu, Hawaii.



KEVIN S.C. CHANG
United States Magistrate Judge

